

**Letter of Findings: 03-20190993P
Withholding Tax
For Tax Year 2017**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana Company is liable for the late-filing penalty as there is no provision under Indiana law which allows for abatement of the penalty.

ISSUE

I. Tax Administration - Penalty.

Authority: IC § 6-8.1-10-6; IC § 6-8.1-5-1; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2011); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2011); [45 IAC 15-11-6](#).

Taxpayer seeks a refund of penalty imposed due to late filing of Indiana W-2s.

STATEMENT OF FACTS

Taxpayer is an Indiana staffing agency which was late in filing their 2017 W-2s. The Indiana Department of Revenue ("Department") assessed Taxpayer a penalty for the late filing. Taxpayer filed a timely protest in which it waived its right to a hearing. Therefore, this Letter of Findings is based upon the information Taxpayer provided in its protest. Further facts will be provided as necessary.

I. Tax Administration - Penalty.

DISCUSSION

Taxpayer failed to file its 2017 W-2s by the due date (January 31, 2018). As such, the Department assessed Taxpayer with a late filing penalty. Taxpayer protested, explaining that it "began attempting to file [the W-2s] prior to the [due date] in the non-bulk filing method and assumed [they] had gone through correctly." Taxpayer claims that it did not learn that their 2017 W-2s were outstanding until July of 2018. At that time, Taxpayer began working with the Department and Taxpayer's payroll software provider to remedy the problem. Taxpayer notes that they were able to file the W-2s in May of 2019 and that they are using a new payroll system. Taxpayer provided documentation evidencing their correspondence with the Department and asks that the Department forgive the penalty due to its diligence in correcting its error.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2011); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2011).

W-2s are considered "information returns" under [45 IAC 15-11-6](#). If a taxpayer "fails to file an information return required by the [D]epartment, a penalty of ten dollars (\$10) for each failure to file a timely return, not to exceed twenty-five thousand dollars (\$25,000) in any one (1) calendar year, is imposed." IC § 6-8.1-10-6. Taxpayer failed

to file its 2017 W-2s in a timely manner, therefore incurring a \$10 per late W-2 under IC § 6-8.1-10-6. While the Department appreciates and acknowledges Taxpayer's efforts, the Department notes that insofar as this penalty is concerned, there is no provision under Indiana law for abatement of the penalty. Therefore, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

August 19, 2019

Posted: 10/30/2019 by Legislative Services Agency
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